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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,089	03/23/2004	Wenying Li	LD0154 DIV1	3840

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EXAMINER

LILLING, HERBERT J

ART UNIT PAPER NUMBER

1651

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1651

1. Receipt is acknowledged of the preliminary amendment filed May 19, 2004.

2. Claims 1-17 are present in this instant application.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-13, drawn to method for the preparation of at least one 26-hydroxyepothilone of formula VI, classified in class 435, subclass 117+.

II. Claims 14-15, drawn to a method for the preparation of a mixture of epothilone F and 26-hydroxyepothilone B, classified in class 435, subclass 117+.

III. Claims 16-17, drawn to microorganism(s) of PTA-1043, classified in class 435, subclass 252.1.

4. The inventions are independent or distinct, each from the other because:

Invention I does not require the specifics of Invention II. Inventions I or II do not require the specifics of Invention III.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification for Invention I/II from that of Invention III which inventions require a different field of search (see MPEP § 808.02); and the inventions have acquired a

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separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

The search and examination of the addition inventions would be extremely burdensome in view of the different computerized data bank searches having different strategies.

5. This application contains claims directed to the following patentably distinct species:

Whereby the microorganism strain of PTA-1043 is selected from:

- a. isolated microorganism or biologically pure culture or mutant thereof;
- b. variant.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 16-17 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations

of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

6. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be

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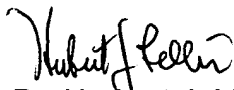
accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is 571-272-0918** and **Fax Number** is (703) 872-9306 or SPE Michael Wityshyn whose telephone number is 571-272-0926. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit **1651**
July 10, 2006


Dr. Herbert J. Lilling
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Group 1600 Art Unit 1651